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Attorneys for Defendant  
Arthur Ditto

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARTHUR DITTO,

Defendant.

CASE NO.: 3:19-cv-5792BHS

Answer to Complaint for Recovery of  
Civil Penalties

**JURY DEMAND**

Defendant, Arthur Ditto, for his answer to the government's Complaint for Recovery of Civil Penalties, using the same paragraph numbering and format, hereby responds on information and belief as follows, noting that to the extent that any fact herein is not formally responded, it should be deemed denied:

### **I. Defendant**

1. Defendant Arthur Ditto ("Mr. Ditto") was a United States citizen at all times relevant to the assessment of the outstanding liabilities at issue in this action. Mr. Ditto resides in Gig Harbor, Washington. **Admits the first sentence. Denies the second sentence.**

### **II. Jurisdiction and Venue**

2. Jurisdiction over this action is conferred upon this district court by 28 U.S.C. §§ 1331, 1345, and 1355. **Admits.**

3. Venue is proper under 28 U.S.C. § 1391(b)(1) because Mr. Ditto resides in this district, and venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district. **Admits.**

### **III. Legal Authority for FBAR Penalty**

4. 31 U.S.C. § 5314 authorizes the Secretary of the Treasury to require United States persons to report certain transactions with foreign financial agencies. Under the statute's implementing regulations, "[e]ach United States person having a financial interest in, or signature authority over, a bank, securities, or other financial account in a foreign country shall report such relationship" to the Internal Revenue Service ("IRS") for each year in which such relationship exists. 31 C.F.R. § 1010.350(a). **This paragraph sets forth legal conclusions and questions of law for which no response is required. To the extent a response is required, Denies.**

///

1           5. To fulfill this requirement, a person must file a Form TDF 90-22.1,  
 2 “Report of Foreign Bank and Financial Accounts,” commonly known as an  
 3 “FBAR.” For the years at issue, the FBAR was due no later than June 30 of the  
 4 following calendar year. 31 C.F.R. § 1010.306(c). **This paragraph sets forth legal**  
 5 **conclusions and questions of law for which no response is required. To the**  
 6 **extent a response is required, Denies.**

7           6. 31 U.S.C. § 5321(a)(5) authorizes the imposition of civil penalties for  
 8 a willful failure to comply with the reporting requirements of 26 U.S.C. § 5314.  
 9 Specifically, section 5321(a)(5)(C) provides for a penalty in the amount of the  
 10 greater of \$100,000 or 50% of the balance in the account at the time of the violation.  
 11 **This paragraph sets forth legal conclusions and questions of law for which no**  
 12 **response is required. To the extent a response is required, Denies.**

13           7. The penalty set forth under 31 U.S.C. § 5321(a)(5)(C) is subject to  
 14 interest and further penalties under 31 U.S.C. § 3717. **This paragraph sets forth**  
 15 **legal conclusions and questions of law for which no response is required. To the**  
 16 **extent a response is required, Denies.**

#### 17 **IV. Defendant’s Failure to Report His Interest in Foreign Financial** 18 **Accounts**

19           8. Mr. Ditto is originally from Canada. He moved to the United States in  
 20 1961 and became a naturalized U.S. citizen in or around 1979. **Admits.**

21           9. From in or around 1982 to 1993, Mr. Ditto was President, CEO, and  
 22 Board Chairman of Plexus Resources Corporation. Following a merger in 1993  
 23 through approximately 2005, Mr. Ditto was the President, Chief Operating Officer,  
 24 and a director of Kinross Gold Corporation (“Kinross”), and President and Chief  
 25 Executive Officer of Kinross Gold U.S.A., which was the operating subsidiary for all  
 26 United States operations. **Denies. Alleges that in 1996, Mr. Ditto was President**  
 27

1 **and CEO of Kinross Gold USA. Mr. Ditto later became President and COO of**  
2 **Kiross Gold Corporation and held that position until 2002. Mr. Ditto served**  
3 **on the Board of Directors until 2005.**

4 10. While President and CEO of Kinross, Mr. Ditto explored the possibility  
5 of opening a mine in the Democratic Republic of Congo (formerly known as Zaire).  
6 **Denies. Alleges that in the late 1990s, Kinross sought to diversify from gold**  
7 **mining to include other mining opportunities such as reactivating a copper**  
8 **mine in the Congo.**

9 11. Mr. Ditto formed a joint venture, called Kinross Forrest Limited, with  
10 Kinross and the Forest Group to give legitimacy to the project, but with the  
11 understanding that Mr. Ditto would ultimately purchase Kinross's interest in the  
12 mine. Kinross owned 60% of Kinross Forrest Limited and the Forest Group owned  
13 the remaining 40%. **Denies. Alleges that the joint venture agreement known as**  
14 **Kinross Forest Limited ("KFL") was signed on October 23, 2001 between**  
15 **Kinross and the newly formed Congolese government to reopen and redevelop**  
16 **a copper mine. Further alleges that in 2001, Mr. Ditto was an employee of**  
17 **Kinross, so his involvement in such transaction was in the capacity of an**  
18 **employee of Kinross, not on his own behalf. Denies that there was any**  
19 **understanding or agreement that Mr. Ditto would ultimately purchase Kinross'**  
20 **interest in the mine.**

21 12. Kinross Forest Limited owned 75% of the mine and the Democratic  
22 Republic of Congo owned the remaining 25%. **Admits.**

23 13. In or around 2004, Mr. Ditto set up "Balloch," a Bermuda foreign shell  
24 corporation, which acquired Kinross's ownership interest in Kinross Forrest  
25 Limited. **Denies. Alleges that Mr. Ditto did not cause the establishment of**  
26 **Balloch. Asserts that Balloch Resources Ltd was originally named New Inca**  
27

1 Gold Ltd and was incorporated in Bermuda on October 7, 1996, engaged in the  
2 acquisition, exploration and development of mineral properties. The name  
3 changed to Balloch Resources Ltd., on July 8, 2004. On November 30, 2005,  
4 the name was then changed to Katanga Mining Limited. Further alleges that  
5 Mr. Ditto and other unrelated parties acquired the shares of Balloch in 2004.  
6 By 2004, Kinross had lost interest in diversifying its gold mining operation and  
7 agreed to sell to Mr. Ditto 20% of its interest in KFL. Since Mr. Ditto was a  
8 board member, the company preferred that Mr. Ditto not own the interest  
9 personally, so Mr. Ditto sold his KFL interest to his mother's trust, the Challis  
10 Trust, in exchange for a payable from the trust, which was paid off over time.

11 14. The Challis Trust is a foreign irrevocable discretionary trust that was  
12 created in the Bailiwick of Jersey ("Jersey") in 1996. **Admits.**

13 15. The Challis Trust was created in Jersey because Mr. Ditto believed  
14 Jersey has a special status that makes it attractive as a domicile for banking. **Denies.**  
15 **Alleges that the Challis Trust, which was formed in 1996, was formed by Mr.**  
16 **Dittos' mother as part of her estate plan, which included the completion of her**  
17 **last will and testament. Further alleges that the foreign management firm that**  
18 **created the Challis Trust chose Jersey to create the Challis Trust, apparently**  
19 **because the foreign management firm believed Jersey has a special status that**  
20 **made it attractive as a domicile for trusts.**

21 16. Mr. Ditto place 50,000 Balloch shares in the Challis Trust in or around  
22 November 2005. The shares were deposited to account XXX-XXXXX3-159 at RBC  
23 Dexia Investor Services nominally titled in the name of York Investments Ltd c/o  
24 Middlemarch Partners Ltd ("York"). **Admits first and second sentence.** York is a  
25 foreign shell corporation that was set up in Anguilla in June 1996 to manage the  
26 associated foreign bank account owned by the Challis Trust. **Denies the third**

1 sentence. **Alleges that the company identified as York is a creation of the**  
2 **government of Anguilla through its 1994 International Business Companies**  
3 **("IBC") Ordinance. Anguilla authorizes these IBC's to conduct business**  
4 **anywhere in the world, except Anguilla. As a result, these IBC's are not**  
5 **authorized to conduct business anywhere, since Anguilla lacks the power to**  
6 **authorize business activity in another sovereign country. York is an alias used**  
7 **by the management and trust company as a label to show ownership of various**  
8 **assets managed by the management and trust company.**

9 17. Mr. Ditto placed his Balloch shares in the Challis Trust because he  
10 wanted to have "a separation" to protect himself from liability for his business  
11 activity in Africa. **Admits.**

12 18. The beneficiaries of the Challis Trust were Mr. Ditto, Elena Gail  
13 McCallum (Mr. Ditto's wife), and Mr. Ditto's four sons. **Admits.**

14 19. On July 21, 2005, Mr. Ditto received a distribution for 50,000 Canadian  
15 dollars from the Challis Trust. **Denies. Alleges that the bank account record**  
16 **provided by the trustee of the Challis Trust indicates that this distribution was**  
17 **a "loan to John." There is no evidence that Mr. Ditto received this distribution.**

18 20. On March 17, 2006, the management and trust company created the  
19 Keswick Trust as a successor to the Challis Trust. Mr. Ditto is the sole trustee of the  
20 Keswick Trust. **Denies. Alleges that Mr. Ditto was not the Trustee of the**  
21 **Keswick Trust.**

22 21. The beneficiaries of the Keswick Trust are Mr. Ditto, Gail McCallum,  
23 Mr. Ditto's four sons, and the Arthur H. Ditto Family Foundation. **Admits.**

24 22. On August 8, 2007, all assets of Challis Trust were transferred to the  
25 Keswick Trust. The total assets transferred were \$1,440,519.16. The assets primarily  
26 came from Mr. Ditto's Balloch shares and commission income from Kinross.

1 **Denies in part. Alleges that the Balloch shares were actually shares of Katanga**  
2 **Mining Limited as a result of the name change. Further alleges that the shares**  
3 **referenced as Balloch shares and the commission income were one and the**  
4 **same. The shares referenced as Balloch shares were the consideration**  
5 **comprising the commission income.**

6 23. The Keswick Trust held foreign bank accounts in the name of Tain  
7 Holdings Ltd c/o Middlemarch Partners Ltd ("Tain"). **Admits first sentence.** Tain  
8 is a foreign shell corporation set up to manage the associated foreign bank accounts  
9 owned by the Keswick Trust. **Denies second sentence. Alleges that the company**  
10 **identified as Tain is a creature of the government of the British Virgin Islands**  
11 **through its International Business Companies ("IBC") Act, Cap. 291. The**  
12 **British Virgin Islands authorizes these IBC's to conduct business anywhere in**  
13 **the world, except the British Virgin Islands. These IBC's may not conduct**  
14 **business anywhere, since the British Virgin Islands lacks the power to authorize**  
15 **business activity in another sovereign country. Tain is an alias used by the**  
16 **management and trust company as a label to show ownership of various assets**  
17 **managed by the management and trust company.**

18 24. Tain was incorporated in the British Virgin Islands in 2004. **Denies.**  
19 **Alleges that Tain is a sham that cannot be said to rise to the level of something**  
20 **that is incorporated as understood under the laws of the United States.**

21 25. Mr. Ditto requested and received funds from the Keswick Trust when  
22 needed. In July 2011, Mr. Ditto received a \$400,000 loan from the Keswick Trust.  
23 **Denies in part. As a beneficiary, Mr. Ditto requested a loan, subject to the**  
24 **Trustee's independent discretion. Terms were negotiated, agreed and**  
25 **documented. Mr. Ditto did not make any other requests for distributions.**  
26 **Other amounts reported as distributions on tax filings made as part of the**  
27



1 OVDP were, with the exception of the \$50,000 referenced in paragraph 19  
2 above, were accounted for by the Trustee as repayments of the original loan  
3 associated with the Trustee's purchase, on behalf of the Challis Trust, of shares  
4 of KFL from Mr. Ditto.

5 26. Mr. Ditto was actively involved in the investment decisions of the  
6 Keswick Trust. **Denies.**

7 27. Mr. Ditto filed timely FBARs for calendar years 2005 through 2012  
8 that listed his personal foreign accounts but omitted the Challis Trust and the  
9 Keswick Trust's foreign accounts, which were nominally titled in the names York  
10 and Tain, respectively. **Admits.**

11 28. In addition to his personal foreign accounts, in the years 2005 through  
12 2012, Mr. Ditto had a financial interest in and signatory authority over foreign bank  
13 accounts, in various countries, as described below:

Name on Account	Account Number	Name of Bank	Location of Bank	Years Interest Held
Tain <sup>1</sup>	01XXX/XX0823	Deutsche Bank	Jersey	2005-2010
Tain <sup>2</sup>	02XXX/XX0823	Deutsche Bank	Jersey	2005-2010
York	XXX-XXXXXX3-159	RBC Dexia Investor Services	Canada	2005-2008
Tain	01XXXXXXXX23/01	Deutsche Bank	Jersey	2008-2010
Tain	02XXXXXXXX23/02	Deutsche Bank	Jersey	2008-2010
Tain	XXX-XXXXXX3-369	RBC Dexia Investor Services	Canada	2008-2011
Tain	XXX-XXXXXX3-370	RBC Dexia Investor Services	Canada	2010-2011
Tain	XX1778	Compagnie Monesgasque de Banque	Monaco	2011-2012

21 **Denies. Alleges that in addition to his personal foreign accounts, in the years**  
22 **2005 through 2012, Mr. Ditto only had a financial interest in each of the foreign**  
23 **bank accounts, in various countries, as described in the chart above if and to**  
24 **the extent that each of such accounts were, under the U.S. tax laws in effect**

25 <sup>1</sup> This bank account was originally titled in the name of Whitmill Trust Co Limited RE Tain Holdings Ltd. The name  
26 was changed in 2008 to Tain Holdings Ltd C/O Middlemarch partners Ltd.

27 <sup>2</sup> This bank account was originally titled in the name of Whitmill Trust Co Limited RE Tain Holdings Ltd. The name  
28 was changed in 2008 to Tain Holdings Ltd C/O Middlemarch partners Ltd.



1 **during such times, found to be entirely grantor trusts.**

2       29. On December 24, 2013, Mr. Ditto was accepted into the 2012 Offshore  
3 Voluntary Disclosure Program (“OVDP”), and he admitted that he was the beneficial  
4 owner of the bank accounts listed in the chart in paragraph 29 (*sic.*). **Denies. Alleges**  
5 **that Mr. Ditto was accepted into the OVDP and, thereunder, Mr. Ditto agreed**  
6 **that, to the extent that such accounts were found to be entirely grantor trust,**  
7 **he had a financial interest in the foreign bank accounts, in various countries, as**  
8 **described in the chart above in paragraph 28.**

9       30. The OVDP is an IRS program that offers taxpayers with undisclosed  
10 income an opportunity to become current with their tax returns. As part of the  
11 OVDP, Mr. Ditto filed amended FBARs for the 2005 through 2012 calendar years  
12 that included the previously omitted trust accounts listed in the chart in paragraph  
13 29 (*sic.*). **Admits first and second sentences.** Mr. Ditto also filed Forms 1040X  
14 (“Amended U.S. Individual Income Tax Return”), admitting he failed to report  
15 taxable income that had been concealed in the undisclosed foreign accounts listed in  
16 the chart in paragraph 29 (*sic.*) in each of the 2005-2012 tax years. **Denies third**  
17 **sentence. Alleges that Mr. Ditto also filed Forms 1040X (“Amended U.S.**  
18 **Individual Income Tax Return”), admitting he failed to report taxable income**  
19 **from the foreign accounts listed in the chart in paragraph 28 in each of the**  
20 **2005-2012 tax years.**

21       31. In the delinquent FBARs, Mr. Ditto reported that the aggregate  
22 maximum U.S. dollar value of his interest in the foreign accounts (otherwise referred  
23 to as the “highest account balance”) exceeded \$10,000 at all relevant times. **Admits.**

24       32. Mr. Ditto was removed from the OVDP in June 2016 for failure to  
25 cooperate because he failed to fully respond to IRS Information Document Requests.

26 **Denies. Alleges that Mr. Ditto was improperly removed from the OVDP**  
27

1 and that Mr. Ditto fully cooperated with the IRS and that Mr. Ditto fully and  
2 promptly responded to all IRS Information Document Requests. Mr. Ditto  
3 further alleges that the IRS acted in an arbitrary and capricious manner in  
4 attempting to remove Mr. Ditto from the OVDP; that the IRS violated its own  
5 internal policies and has acted with unclean hands in attempting to remove Mr.  
6 Ditto from the OVDP; asserts that laches applies to the IRS's actions in  
7 attempting to remove Mr. Ditto from the OVDP without responding to Mr.  
8 Ditto's timely protest which was filed with the Territory Manager as directed  
9 by the IRS (then) Deputy Commissioner Miller Memorandum ("Miller  
10 Memo") applicable to OVDP opt outs and removals and the procedures advised  
11 by the IRS in Form 4566 which was issued to Mr. Ditto. Mr. Ditto further  
12 alleges that the IRS's purported removal of Mr. Ditto from the OVDP was a  
13 breach of its contract with Mr. Ditto, who fully satisfied his obligations under  
14 the IRS's offered OVDP and provided due consideration to the IRS, by  
15 communicating and cooperating with the IRS throughout its examination  
16 including but not limited to: (a) providing a statute extension of more than 2  
17 years for the IRS to examine and assess; (b) producing thousands of pages of  
18 requested documents; (c) filing requested amended returns; (d) compromising  
19 issues in favor of the IRS; and (d) agreeing to waive his 5<sup>th</sup> Amendment rights  
20 in responding to the IRS's inquiries including but not limited to submitting to  
21 an interview by the IRS.

22 33. After Mr. Ditto was removed from the OVDP, the IRS conducted  
23 examinations of Mr. Ditto's FBAR obligations for calendar years 2005 through  
24 2012. Based on the examination, Mr. Ditto was assessed civil penalties for his willful  
25 failure to report his interest in the foreign financial accounts listed in the chart in  
26 paragraph 29 for the 2005-2012 calendar years. **Denies. Alleges that Mr. Ditto was**

1 improperly removed from the OVDP; that Mr. Ditto was not willful with  
 2 regards to his FBAR reporting obligations. Alleges further that Mr. Ditto  
 3 cooperated throughout the IRS examination which began in 2014, under the  
 4 pre-clearance acceptance of Mr. Ditto into the OVDP, and that cooperation  
 5 continues today. Alleges that the IRS has assessed the civil penalties asserted  
 6 herein; but asserts that such assessments was improper, illegal, and a breach of  
 7 the government's promises under the OVDP.

## 8 **V. CLAIM FOR RELIEF: JUDGMENT FOR CIVIL PENALTY**

### 9 *Liability for the Civil Penalties*

10 34. During the 2005 through 2012 calendar years, Mr. Ditto was a United  
 11 States person within the meaning of 31 C.F.R. § 1010.350(b). **Admits.**

12 35. During the 2005 through 2012 calendar years, Mr. Ditto had a financial  
 13 interest in the foreign accounts listed in the chart in paragraph 29 (*sic.*) and/or  
 14 signatory authority over the foreign accounts, within the meaning of 31 C.F.R. §  
 15 1010.350(f). **Denies. Alleges that During the 2005 through 2012 calendar years,**  
 16 **Mr. Ditto only had a financial interest in each of the foreign bank accounts, in**  
 17 **various countries, as described in the chart in paragraph 28 (*sic.*) above if and**  
 18 **to the extent that each of such accounts were, under the U.S. tax laws in effect**  
 19 **during such times, found to be entirely grantor trusts.**

20 36. The foreign accounts listed in the chart in paragraph 29 were bank  
 21 accounts in a foreign country. **Admits.**

22 37. For each of the years 2005 through 2012, the balance of the foreign  
 23 accounts listed in the chart in paragraph 29 (*sic.*), individually and/or collectively,  
 24 exceeded \$10,000. **Admits.**

25 38. Mr. Ditto failed to file FBARs with regard to the 2005 through 2012  
 26 calendar years that disclosed his interest in each of the foreign accounts listed in the  
 27

1 chart in paragraph 29 (*sic.*) on or before each of the applicable deadlines, as required  
 2 by 31 U.S.C. § 5314 and 31 C.F.R. § 103.27(c). **Denies. Alleges that Mr. Ditto**  
 3 **did not disclose his interests in the subject foreign accounts and further alleges**  
 4 **that under 26 USC § 679, or the applicable subsequently promulgated**  
 5 **regulations, as were then in effect, the law was unclear as to whether such**  
 6 **accounts were required to be reported or that the law placed Mr. Ditto on clear**  
 7 **legal notice such that accounts were reportable. Mr. Ditto further alleges that**  
 8 **he is entitled to the reasonable cause exception set forth under all applicable**  
 9 **laws.**

10 39. The failure of Mr. Ditto to timely file FBARs that disclosed each of his  
 11 foreign accounts listed in the chart in paragraph 29 (*sic.*) with regard to the 2005  
 12 through 2012 calendar years was willful within the meaning of 31 U.S.C. §  
 13 5321(a)(5). **Denies.**

14 ***Assessment and Collection of the Civil Penalty***

15 40. On August 29, 2017, a delegate of the Secretary of the Treasury timely  
 16 assessed civil penalties against Mr. Ditto, due to the willful failure of Mr. Ditto to  
 17 disclose the foreign accounts listed in the chart in paragraph 29 to the IRS (“FBAR  
 18 Penalty”) for each of the years 2005 through 2012. The total penalty amount that the  
 19 United States seeks to reduce to judgment is \$3,965,778.00 as of August 29, 2017.  
 20 **Denies. Alleges that Mr. Ditto did not willfully fail to disclose foreign accounts**  
 21 **as alleged by the government. Alleges that if the action has been filed timely, it**  
 22 **is solely as a direct consideration to the IRS arising from the statute extensions**  
 23 **agreed to by Mr. Ditto as a condition of his cooperation under the OVDP.**  
 24 **Admits that the government seeks to reduce to judgment the amount of**  
 25 **\$3,965,778 as of August 29, 2017. Alleges that the August 29, 2017 civil penalty**  
 26 **was not properly assessed.**

1           41. The assessments of the FBAR penalties was timely. Pursuant to 31  
2 U.S.C. § 5321(b)(1), the statute of limitations for the assessment of an FBAR penalty  
3 is six years. On November 12, 2015, Mr. Ditto's counsel signed a consent to extend  
4 the time to assess the civil penalties under 31 U.S.C. § 5321 for the 2005 through  
5 2012 years until December 31, 2017. On March 31, 2017, Mr. Ditto's counsel signed  
6 a consent to extend the time to assess the civil penalties under 31 U.S.C. § 5321 for  
7 the 2005 through 2012 years until December 31, 2018. The FBAR penalties for the  
8 2005 through 2012 years were timely assessed on August 29, 2017. **Denies. Alleges**  
9 **that, as part of Mr. Ditto's continuing cooperation with the IRS under the**  
10 **OVDP, counsel for Mr. Ditto signed consents to extend the time to assess the**  
11 **civil penalties at the times stated above by the government. Mr. Ditto presently**  
12 **lacks information whether the FBAR assessment statute was open at the time**  
13 **the consents were signed. Alleges that, in all events, the August 29, 2017 civil**  
14 **penalty was not properly assessed.**

15           42. A delegate of the Secretary of Treasury sent Mr. Ditto notice of the  
16 assessment of the FBAR Penalties and demand for payment. **Admits.**

17           43. Despite notice and demand for payment, Mr. Ditto has failed to pay the  
18 penalties assessed against him with respect to his willful failure to file an FBAR for  
19 the 2005, 2006, 2007, 2008, 2009, 2010, 2011, and 2012 calendar years. **Denies.**  
20 **Alleges that Mr. Ditto did not willfully fail to disclose foreign accounts as**  
21 **alleged herein. Admits that Mr. Ditto was issued notice and demand and that**  
22 **he has not paid the amount sought in the notice and demand. Alleges that, in**  
23 **all events, the August 29, 2017 civil penalty was not properly assessed.**

24           44. In addition to the FBAR Penalties, Mr. Ditto, owes late-payment  
25 penalties pursuant to 31 U.S.C. § 3717(e)(2), and 31 Code of Federal Regulations §  
26 5.5(a), and interest according to law. **Denies.**

1        45. Mr. Ditto is liable to the United States of America for the FBAR  
2 Penalty, as well as associated penalties and interest, in the total amount of  
3 \$3,965,778.00 as of August 29, 2017, plus statutory accruals from that date until the  
4 liability is paid in full. **Denies. Alleges that recovery of FBAR penalties is limited**  
5 **to the regulatory cap of \$10,000 for non-willful violations or \$100,000 for willful**  
6 **violations found under § 5321.**

7        46. This is a timely civil action to collect the FBAR Penalty, and the  
8 associated penalties and interest under 31 U.S.C. § 5321(b)(2). **Admits that this**  
9 **action seeks to collect an FBAR Penalty. Alleges that the action has been filed**  
10 **timely solely as a direct benefit to the IRS from the statute extensions agreed to**  
11 **by Mr. Ditto as a condition of his cooperation under the OVDP. Alleges that,**  
12 **in all events, the August 29, 2017 civil penalty was not properly assessed.**

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1 WHEREFORE, having responded to the allegations in the Government's  
2 complaint, Mr. Ditto requests the Court to:

3 A. Dismiss this complaint and action with prejudice; and

4 B. Award the defendant its costs and such other further relief as the Court  
5 deems just and proper.

6  
7 DATED: January 3, 2020

HOCHMAN SALKIN TOSCHER PEREZ P.C.

8  
9 By: /s/Sandra R. Brown-Bodner

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